

**Northeast Regional NRDA Workshop
May 30 – June 1, 2006
The Hotel Viking
Newport, Rhode Island
Final Report**

At the 2004 National Cooperative Damage Assessment Workshop, trustee and industry (or Potentially Responsible Party/PRP) participants expressed great interest in continuing the dialogue on damage assessment in regional settings across the country. In response, there was a commitment to organize a series of regional workshops. The objective of these workshops is to allow practitioners to explore ways to improve efficiency and coordination while also reducing conflict in natural damage assessment and restoration (NRDA or NRD) cases. Ultimately, these workshops are intended to be stepping stones to future discussions on damage assessment practice outside the context of cases.

The Northeast Regional Workshop (*see [Agenda](#) and [Registrants List](#)*) the third in this series of regional workshops, was held on May 30 –June 1, 2006 in Newport, Rhode Island. The workshop brought together approximately one-hundred practitioners and regional representatives from government trustees (Federal/state/Indian tribal), industry, and response agencies.

Pre-Meeting – May 30

“NRDA 101” - Discussion and Q&A Session

Participant feedback from the Southeast/Gulf Regional Workshop and the level of participation in the Great Lakes Regional Workshop clearly indicated a need for basic NRDA education. With this need in mind, the evening before the workshop began, an optional session was hosted for NRDA practitioners interested in learning about and discussing the elements of the NRDA process. (*See [NRD 101 Basics Presentation](#), [NRD 101 Basics References](#), [NRD 101 Restoration Scaling Presentation](#), and [NRD 101 Restoration Scaling Bibliography](#)*)

Marana Valdez of Organizational Learning Associates, one of the workshop facilitators, opened the session by providing the background and goals for the workshop and this session. Dale Young, NRD Program Director with the State of Massachusetts’ Executive Office of Environmental Affairs and Chair of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO¹) NRD Focus Group, hosted the NRD 101 session. Dale asked participants to introduce themselves and asked how many attendees had worked on NRD cases, either settled or implemented cases. Approximately 10 people (25% of attendees) that they have been involved in NRD cases. .

Eric English of National Oceanic and Atmospheric Administration hosted the Restoration Scaling session. (*See [biographies for Dale Young and Eric English](#)*)

Approximately 40% of the workshop participants attended this session.

Questions and Answer

To Dale Young:

¹ ASTSWMO is an organization supporting the environmental agencies of the states and trust territories. ASTSWMO focuses on the needs of state hazardous waste programs; non-hazardous municipal solid waste and industrial waste programs; recycling, waste minimization, and reduction programs; Superfund and State cleanup programs; waste management and cleanup activities at federal facilities; and underground storage tank and leaking underground storage tank programs. Dale Young is Chair of the ASTSWMO NRD Focus Group. For more information on ASTSWMO, see: <http://www.astswmo.org/>

- Q Is there ever a case where trustees can use funds other than to restore – if settled under CERCLA and OPA?
- A No. I do not know of any cases under CERCLA and OPA where NRD can go to general funds. CERCLA/OPA require that NRD funds be used to restore, replace, or acquire the equivalent of the injured resources. Dale and other respondents pointed to state law provisions (e.g., MA, NH, ME, obscure provision for NY for oil spills) as examples that may not be as restrictive as federal law, but state policy is to use funds for restoration.
- Q One attendee asked about the concept of “controlling” respecting trustee jurisdiction. For example, would the state oversee resources due to hunting?
- A The state would still have oversight of resources regardless of hunting season or any other recreational activity.
- Q What is the nature and scope for Indian tribal resources?
- A To address NRD concerns as a trustee, the Indian tribe must be federally recognized as such. If the Indian tribe uses resources for cultural purposes, the resources need not necessarily be on tribal lands. Tribal resource rights may also be governed by existing US-Indian tribal treaties.
- Q Are there Federal resources that are not state resources?
- A Generally not. Typically, it is the reverse of this. For example, states typically have oversight authority over groundwater – the Federal trustees generally do not.
- Q Can Federal trustees influence Federal PRPs, e.g., like DOE and DOD?
- A Federal agencies cannot sue each other, but Federal trustees can influence incorporation of restoration concerns, for example, into the remediation process. This has occurred in the State of Virginia with the U.S. Navy, for example.
- Q Does the issue of 1980 CERCLA timeline by which trustee actions may hold (e.g. the wholly before pre-enactment provision) also apply to state actions?
- A If a case is brought solely under state law, the CERCLA provisions do not apply. Depending on the specifics of the case and the time period of the release and injuries, States and Federal trustees, under CERCLA, may have the opportunity to go further back in time; however, it becomes a practical matter as to whether and to what extent state trustees can assess injury.
- Q Can you further explain the concept of baseline?
- A Perhaps this is a discussion for an advanced course, NRD 102? Note that baseline is an important and well-defined term under the NRD regulations, i.e., the condition of natural resources and services but for the incident. The challenge becomes whether we have the capability to define “baseline” at the site in question. Baseline is significant in that it serves as a benchmark for restoration.

To Eric English:

- Q Regarding resource-to-resource scaling, there is often a reluctance to provide compensation using out-of-kind resources. If out-of-kind restoration appears to be the most appropriate approach, what is the best way assure people that the resources being provided truly compensate for the resources lost?
- A If people are reluctant to accept out-of-kind compensation, it could be an indication that the value of the proposed compensatory project is low. Restoration scaling ultimately should reflect the value people place on gains and losses. If there is a discrepancy between what people want and the results of a scaling exercise, then the details of the scaling exercise may

require better explanation. Alternatively, the metrics applied in the scaling exercise may not be appropriate and need to be refined.

Q Is it possible to synthesize information from past scaling exercises for the benefit of future cases?

A It is a good idea, and we are exploring ways to do that.

Q Are there any downsides of HEA?

A One downside is whether HEA reflects what people want versus what scientists want. Scientists have a better understanding of ecosystem services, but they may not select ecosystem metrics that correspond to services most important to the public. Ultimately, it is the public which must be compensated. Also, HEA works well when there is the ability for compromise in a cooperative setting. The most difficult challenge for HEA is developing tradeoffs for one habitat versus another. Selecting metrics that capture ecological services equally well in two different habitats is difficult. Of course, HEA is for ecological uses and cannot address human-use issues. Please refer to the references provided regarding the most appropriate use of HEA (Allen, Chapman and Lane, 2005; Jones and Pease, 1997; Dunford, Ginn and Desvousges, 2004).

Q Are stated preference methods more resource intensive and expensive?

A Often they can be. They generally require a level of preparation and rigorous analyses that is more involved than a simple HEA that relies on information from the literature.

Q Do stated preference methods capture the full range of the public's concerns and values?

A Stated preference surveys must simplify the available options in order to avoid excessive burden on respondents. However, the options presented in surveys are developed based on focus groups and pre-tests which should address the full array of potential options and values. What appears in the survey should represent all options relevant to accurately assessing public preferences as determined in the focus groups and pre-tests.

Q How do you determine which injury or loss is most important? To fish, to the public, etc.? As an economist, do you have a hierarchy of what's important?

A Generally, there is not a significant overlap in assessing ecological and human-use losses. Assessment and restoration can therefore be undertaken separately and without defining any order of importance. However, in some situations, there may be a double counting issue, for example, assessing oyster reef losses may be approached from either an ecological or recreational perspective. In these cases both types of loss have equal importance and must be addressed, but it is possible that a single restoration project will fully compensate for the two types of loss.

Day 1 – May 31

Workshop Introduction

Workshop Goals and Agenda

Interview Themes

Iris Ioffreda and Marlana Valdez of Organizational Learning Associates opened the two-day workshop by highlighting the workshop goals and themes. Participants were asked to introduce themselves and their affiliations.

Iris emphasized that while the genesis of these regional workshops was the San Diego Cooperative Assessment Workshop, the focus of the regional workshops is to discuss the breadth of issues

involving NRDA, not just cooperative approaches. Through dialogue, as provided by this workshop and future opportunities, however, the workshop planners do hope that more cases can be moved forward using a cooperative framework or approach. Earlier regional workshops accomplished the goal of moving cases forward cooperatively, and the workshop planners hope that the Northeast Regional Workshop will offer additional opportunities to integrate cooperative approaches and strategies into case work.

Iris explained the objectives of this workshop:

- To provide regional practitioners with an opportunity to focus on issues and challenges pertinent to the region, including discussion of respective stakeholder interests;
- For participants to explore creative solutions to problems and identify opportunities to improve the response and NRDA process.
- For participants to discuss how affected parties might enhance their interaction and coordination, effectively addressing challenges and opportunities.
- To develop and improve working relationships among practitioners in the region from various stakeholder groups.
- To bridge the gap between less experienced and experienced practitioners.

Marlana presented background information on the workshop and how it was designed. Nine people from the different sectors represented at the workshop were interviewed to determine the most pressing challenges in NRDA practice in the Northeast region and what participants hoped the workshop would achieve. The interview data was broken down into themes as follows:

1. States

States expressed a desire to learn more about the NRDA process and to learn from other states' experiences. How have other states that have established program found the funding for those programs. States with fledgling programs want to learn from experienced practitioners.

2. Confusion

Lack of clarity about federal agencies/trustees/industry

- A. Asserting jurisdiction
- B. Timelines and operational procedures, particularly EPA
- C. How much flexibility in procedure
- D. How RPs are chosen – some and not others
- E. Little information about who does what in what states.

3. Complex sites

- A. DOD facilities
- B. Historical and complex sites
- C. Large and complex sediment sites
- D. Municipalities as RP

4. Science

Concern about measuring resource loss – human, cultural, natural. How accurate do measures need to be when working toward settlement ?

5. **Issues specific to the Northeast**

- A. Groundwater issues
- B. Working with the Coast Guard
- C. Finding restoration alternatives in urbanized areas

What Participants Wanted at the Workshop --

1. Specific tools for improving NRDA. No broad brush strokes but specific information on what has worked and what hasn't. "We tried this; we tried that."
2. Sharing of ideas among states with nascent NRDA programs – how to elevate status. Money, staff, other resources.
3. Meet counterparts in other states, and NRDA reps for feds, tribes, industry – opportunities for networking.
4. Clarity about how federal agencies operate.
5. Ideas about how to move focus from cleanup to restoration or better integrate remediation and restoration.

Iris discussed various resources available to workshop participants, including biographies and presentations as well as contact and status information for state trustee programs. ([See *State Trustee Efforts*](#)) She indicated that there would be sufficient Q&A time available to voice or write down questions for the speakers as well as to meet and greet fellow practitioners.

Marlana set the ground rules for the workshop, requesting that participants follow the ground rules to encourage open, honest dialogue:

- Be present and engaged, participate fully
- Open and respectful dialogue
 - Listen
 - Speak honestly
 - It's OK to disagree.
- No attribution – all affiliations left at the door
- In terms of discussions – refrain from discussing case or site sensitive issues. Reference specific cases and past case approaches only when doing so will further the audience's understanding
- Refrain from solicitations or marketing of products and services.

In addition to the presentations, the workshop offered a series of posters on unique NRD programs, initiatives, and cases highlighting cooperation, including:

- [NRD in Massachusetts](#)
- [Promoting Efficient NRDs in Small Spills](#)
- [Regional Cleanup and Restoration Initiative in Upper Delaware Estuary](#)
- [Athos I - Delaware River Oil Spill](#)
- [Chalk Point Cooperative Assessment, Patuxent, MD](#)
- [North Cape Poster 1](#) and [Poster 2](#)

Marlana ended the introduction by introducing the Keynote speaker -- W. Michael Sullivan, Director, Rhode Island Department of Environmental Management.

Workshop Introduction/Keynote Address

W. Michael Sullivan, Director of the Rhode Island Department of Environmental Management, opened the meeting. (See [Michael Sullivan's Presentation and Biography](#)) Mr. Sullivan thanked the organizers for giving him the opportunity to give the keynote address. His interest and past experience has focused on using policy to direct science. Mr. Sullivan spoke about Rhode Island's legacy from DOD (e.g., the Navy) and landfill sites (in North Smithfield near the Blackstone River) as well as spills such as the North Cape. Director Sullivan noted that with vision, commitment, sound partnerships and persistence, progress has and can be made – he discussed a variety of environmental goals achieved to date. He underscored that NRD can best be achieved through cooperative efforts among the parties involved.

Mr. Sullivan's goal is to make Rhode Island fishable, swimmable, and playable despite having the hardest working rivers in the country. Empowered by the Governor of Rhode Island and with the help of other agencies, he hopes to achieve this mission. Mr. Sullivan thanked everyone who worked so diligently with the State of Rhode Island to restore its natural resources, imploring all to continue the struggle to work cooperatively, especially in times when funding and staff resources are limited. The keys to future success also lie in establishing strong partnerships that allow parties to share resources, among other things.

Stakeholder Perspectives on NRDA Issues

The morning's panel discussions focused on response and NRDA concerns from the perspectives of the various stakeholders involved in a site. Panelists representing trustees, industry, and the response community were asked to address the following questions:

1. What challenges and opportunities does each stakeholder group confront in working with a site? That is, what does each stakeholder group need to understand about other stakeholder groups involved in the site?
2. To ensure a productive outcome, what does each stakeholder need from the others involved in the site?
3. Similarly, what can each stakeholder offer to others involved in the site?
4. How might we improve the response and NRDA process?

Marlana Valdez outlined these four questions and introduced the moderator, Tom Brosnan, Atlantic Branch Chief with NOAA's Office of Response & Restoration.

Panel Session: Stakeholder Perspectives

Tom Brosnan, Atlantic Branch Chief with NOAA's Office of Response and Restoration and moderator of this panel, welcomed the workshop audience. Tom highlighted that the purpose of this panel is to communicate the perspectives of each stakeholder community. To advance the science (or practice) of NRDA, there is a need to be more candid and increase communication and expectations between disciplines, stakeholders, and the public. Hoping to draw candid commentary and diverse perspectives from the panelists, he said this is a unique panel reflecting a collection of provocative speakers, deep thinkers, and cross-dressers. Tom introduced each panelist.

Tom then proceeded to give his presentation on cooperative NRD. (See [Tom Brosnan's Presentation and Biography](#)) After briefly highlighting the NRD process vis-à-vis the prior evening's training, Tom explained some of the essential elements and benefits of cooperative assessments. Tom encouraged

folks to become familiar with and take advantage of cooperative opportunities, citing NOAA's web site on this topic that could help guide such efforts. See <http://www.darp.noaa.gov/partner/cap/index.html>

Barbara J. Goldsmith, President of Barbara J. Goldsmith & Company, followed with a comparison of industry's national practice versus progress in the Northeast Region. (See [Barbara Goldsmith's Presentation and Biography](#)) Since 1988, Barbara has also served as Director of the Ad-Hoc Industry Natural Resource Damage Group, a multi-sector group of companies. Barbara noted that many settlements in the Northeast appear to be cash-outs as opposed to restoration implementation, that there is a potpourri of Federal and state laws governing similar processes, many injuries are focused on groundwater and soil, and cooperative assessment are only now starting to emerge. She indicated that many important sites and actions can inform us such as New Bedford Harbor, the Housatonic and Hudson Rivers, the North Cape oil spill, and New Jersey statutory and regulatory changes governing natural resources. Barbara indicated that the real challenge in the Northeast is to determine how to resolve NRD not just for easy sites but complicated sites. To this end, there needs to be a sound foundation for a working relationship (see this and follow-up slides on this topic). Nationally, this may mean a flexible, more unified NRD practice. She cited the on-going DOI Federal Advisory Committee Act, or FACA, process that may help to achieve greater consistency in the CERCLA NRD process with OPA NRD process (see: <http://restoration.doi.gov/faca.html>). Site-specifically, there ought to be, among other things, a framework for decision making, identified endpoints, measures of success, open dialogue, and joint problem solving. Barbara closed her brief time by referring to various resources available to folks (see last slide).

Sharon Brooks, Associate Economist with the Natural Resources Damages Unit of the Division of Fish, Wildlife and Marine Resources within the New York State Department of Environmental Conservation, discussed state trustee achievements and interests. (See [Sharon Brooks' Presentation and Biography](#)) Sharon, who is a member of the ASTSWMO NRD Focus Group, provided a short history, description, and activities of ASTSWMO, an organization that helps address consistency of issues and practice and provides a forum for dialogue with all stakeholders. (See Footnote 1) Sharon highlighted a wealth of workshops and materials sponsored and produced by ASTSWMO that may also be of great use to NRD and response practitioners. Sharon underscored some major challenges facing the states, namely better coordination and funding. Sharon challenged industry to step up to the plate if they are truly interested in cooperation and resolving their liability.

Tom noted the solid EPA presence at this workshop when introducing Rich Cavagnero, Deputy Director of the Office of Site Remediation and Restoration (OSRR) in USEPA Region 1, New England, who came to talk about his region's organization, philosophy, and approach. (See [Rich Cavagnero's Presentation and Biography](#)) Rich highlighted the need for better measures of success, the need and capacity to work together with the trustees early on in the response process to expedite remediation and restoration concerns, the pressure to assess cost versus benefit, and the fact that there are a lot of public expectations, at times contradictory, on EPA and Superfund lately. (See [OSWER Directive 9285.6-08 "Principles" slide](#)) Rich underscored various activities in the Northeast region that are focused on addressing some of the more seminal concerns under Superfund.

William (Bill) H. Hyatt, Jr., Partner at Kirkpatrick & Lockhart Nicholson Graham LLP, spoke in the role of common counsel for PRP groups. (See [Bill Hyatt's Presentation and Biography](#)) He described some of the dynamics affecting PRPs, noting that there is no single "PRP perspective," but there are common themes. Bill indicated that while there is a good understanding of the cleanup program (response process), that is not true of NRD. He underscored the need for education. He also stressed that there is fear of NRD because liability is potentially daunting and not well understood. Part of the problem is the lack of success stories or communicating such stories. Bill stated that the problem is that PRPs are common from many different perspectives but have various agendas and experiences. It is therefore imperative to communicate that we need to do things right the first time, to allow for creative solutions, and to provide opportunities for building trust by working together. Bill focused on

the PRP's objectives when entering an NRD, and factors favoring and disfavoring cooperative agreements ([see presentation slides](#)). Bill highlighted the challenges respecting how best to apply baseline, how best to integrate remediation with restoration, and the notion that NRD can't be done more expeditiously. These and other concerns also surfaced in the early years in the cleanup process, but now that many PRPs have worked through cleanup processes, they are no longer central issues in the remediation area. These perceptions, however still appear to apply to NRD.

Sherry Krest, Environmental Contaminants Program Leader with the U.S. Fish & Wildlife Service's Chesapeake Bay Field Office, focused her talk on the natural challenges and opportunities respecting personnel and processes. ([See Sherry Krest's Presentation and Biography](#)) She noted that personnel and process issues arise both in the context of integrating restoration into the response process and also during the remaining NRDA process. Sherry hoped that the audience would come away with the nuggets of her last slide, that is to be flexible and realistic, to think outside the box, to accept a level of risk, to respect other opinions and interests, to share resources, to find a common goal, to talk about restoration projects early and often, and to get the "snakes out on the table" (to lay out concerns truthfully).

Charles (Chuck) Nace, Environmental Toxicologist, Technical Support Team, Emergency and Remedial Response Division, USEPA Region 2, talked about his region's perspective and approach. ([See Chuck Nace's Presentation and Biography](#)) Chuck was open to learning how to incorporate more NRD concerns into the cleanup process in EPA Region 2. Chuck discussed his region's issue of how to incorporate trustee concerns in the cleanup process given statutory requirements and constraints. He stated that there is a desire and mechanism to better communicate with the trustees through, for example, via broadcast e-mails of RODs (Records of Decisions) to the Department of the Interior. Based on Chuck's Passaic River experience, he underscored that the more that EPA puts into coordination, the more they get out of it.

Questions and Answers

To Tom Brosnan:

- Q Is it required that trustees have a funding agreement in place before undertaking a cooperative assessment?
- A Cooperative assessments span a wide spectrum of experience and a funding agreement is not a de facto requirement for trustees to participate. However, the trustees' experience is that cooperative assessments are most successful when supported by a funding agreement. We believe that dedicated funding enables the trustees to fully participate and can expedite the assessment, ultimately saving money in the long-term.

To Barbara Goldsmith:

- Q How do you move from a process-focused to restoration-focused approach?
- A To do this, you have to have a backdrop of a strong framework that governs liability. Trustees need to show PRPs that they can expeditiously resolve NRDs and provide certainty. Of course, much is a function of the people involved in working on the case.
- Q How does a company or PRP disclose its perceived liability? Externally? Internally? Trustees often have to spend considerable resources documenting/determining liability. If this process was expedited, we could get to restoration faster.
- A No response provided.
- Q Since NRDA and restoration are liability-driven from a company perspective and since company attorneys fight to "avoid" such liability, how do companies override their liability

concerns in order to develop a cooperative action? Is it only “clear” to the company when a liability determination is inevitable?

A No response provided.

Q Will the DOI advisory committee (the FACA) be recommending regulatory or statutory changes regarding NRDA? Are such changes under discussion?

A No response provided.

To Bill Hyatt:

Q What would you consider a “successful precedent” in the NRD field?

A Success is a settlement that everyone buys into by consensus. There need to be more settlements, which then need to be advertised.

Q When would PRPs feel they have a good deal?

A There is a direct parallel between remediation and NRDA. History likely need to have learning curve for comfort. Ultimately, any settlement occurs because the parties feel that the expense they have undertaken is reasonable in relation to their exposure. I think the problem is that private parties have difficulty quantifying their exposure. As I said, the New Jersey formula is an example of how doing that can inspire settlements.

Q Regarding a question posed to Rich Cavaegnero respecting good or bad examples of integration of remediation with restoration.

A New Jersey has done a commendable job regarding groundwater formula, which is arbitrary, but provides a down and dirty means to get to settlement that is perceived fair. This eliminates process and goes to settlement, providing certainty and predictability.

Q When dealing with multi-party/multi-contaminant problems where only a minority of companies is known and viable and these companies are seen as minor contributors to the problem, how and why would that minority of companies want to “cooperate”?

A The same principles apply to evaluating a settlement in this context as in a simple traffic accident in the sense that the private parties will make the comparison described above. What factors might motivate a settlement (or a cooperative NRDA)? Early definition, with minimal process, of the exposure, recognition of orphan causes of the NRD, cost savings from the lack of extensive process. I also think that disparities between the values trustees and private parties place on assets (private parties value land at a dollar, the trustees believe that as a natural resource, the land is worth \$100) allows leveraging which promotes settlements. In the end, there has to be a feeling of trust that the two sides are being fair to each other.

Q My understanding is a successful NRDA process depends upon all parties and trustees being reasonable, there being a consensus, shared objectives, and a focus on restoration. What if parties or trustees are unreasonable, there is no consensus, there are different objectives, and there is little focus on restoration?

A See my answer above. This is the dynamic you try to avoid. I would continue to engage, try to build trust, and hope for changes of heart. I think that approach applies on both sides of the table.

Q Is it necessary to have a legally-binding, cooperative agreement before entering into a cooperative assessment?

A From the private party perspective, probably yes, but minimally. I am in favor of baby steps, getting to the table, starting working together, even on tiny things, to start accomplishing things

and to give parties an opportunity to measure each other's reasonableness. If the demands for a cooperative agreement are too high, the private parties may well be driven away from the table. I think that a cooperative assessment should be viewed as building a relationship rather than as an enforcement exercise (even though in fact it is both). I think talking, agreeing on the littlest things, is a key ingredient in building the relationship. Making of list of expectations and then seeing how you can put the two together, could be an example.

To Sharon Brooks:

- Q Any suggestions as to how to get all parties talking about resource "services", early and often? This seems to be anathema to many trustees.
- A Take each case on its own. Find a solution regarding case circumstances. The states cannot force this issue.
- Q How do states coordinate with Federal trustees at non-NPL (National Priority List) sites? At state-lead sites? At Brownfields?
- A In New York, we coordinate the same regardless of site status since it is usually the same individuals involved. There may, in some instances, be a more of state-led or different levels of involvement due to the nature of injuries, extent of injuries or other aspects of the case. Exception is made to Brownfield sites, in NY there is presently no provision for NRD in the state regulations.
- Q Why isn't more effort focused on resolving NRDA issues and promoting restoration at these less complex sites versus NPL mega sites?
- A Given existing constraints, prioritization is a reality. I believe NRDA practitioners work very hard to resolve all sites or cases eligible for resolution. NPL sites, in general, are larger, more contaminated and impact larger segments of the public than other sites and therefore are appropriately priorities.

To Sherry Krest:

- Q Do you feel that trustees need to compromise their goals when NRD liability is negotiated in the context of "integrated remedy" consent decree with EPA? Would trustees feel pressure if the EPA process is moving well and trustees may need to compromise?
- A The trustees need to have some basic level of information to move forward. The issue is how you integrate restoration concerns if the remedy is not nailed down.
- A The trustees need to have some basic level of information to move forward. The issue is how you integrate restoration concerns if the remedy is not nailed down.
- Q What role should legal staff play in the cooperative assessment process? When should they or should they not be involved?
- A In cooperative cases that I have worked on, the technical people determine the injury and choose the preferred restoration option. It is the responsibility of trustee representative to inform their legal council of the technical decisions that are being made during the process. The legal team is engaged when the decisions are finalized and ready to be documented and memorialized.
- Q Are there settled cases that can be reviewed using "integrated remedies" in the Maryland-Delaware area? If so, what are they?
- A Halby Chemical (Wilmington, DE) and Spectron (Elkton, Maryland)

Q Please explain how you settled the case without agreeing on injury. For example, what were the dynamics of the discussion? How was the injury addressed in the settlement document? How did the trustees address the injury issue during the public review?

A We (RP and Trustees) focused on restoration. Once we selected a project and scaled it, we found that it would have cost more to argue over the difference in the injury numbers than to increase the size of the restoration project. Therefore, we agreed to disagree and moved forward with implementation. In the Final Report entitled "Acute Mortality to Birds" (March 2001), there are two numbers used – an RP number (285) and a Trustee number (361) when determining the number of ruddy ducks killed. The production forgone was 384 for the Trustees and 303 for the RP. In the DARP, the Trustee number is referenced because it was used to scale the restoration project. The case is the Chalk Point Oil Spill, Swansons Creek, Maryland.

Q Can you provide suggestions to possibly use common experts for trustees and PRPs?

A It depends on what expertise you're looking for. I suggest asking other NRDA practitioners who they recommend for a particular task or study.

To All Trustees:

Q Sharon (Brooks) mentioned her wish list for the needs of the process. What are yours (for Sherry Krest and Tom Brosnan)?

A (Tom Brosnan) Tom thought that Sharon's list covered the bases, referring to those ideas in the breakouts.

Q Sherry Krest mentioned the impacts of political decisions on positions taken in negotiations. What success have you had in filtering those positions versus those based on science and practicability? Or to what degree is that important?

A (Tom Brosnan) While there are always outside influences and factors to consider, NRD is typically based in science and fact-finding. We have not really had issues where outside influences derailed restoration projects.

To Rich Cavagnero:

Q What is a successful integration or a bad experience?

A Success is first getting to a remedy decision that comports with the NCP and EPA's program guidance while also addressing trustee concerns that remediation serve as primary restoration. Remedy decisions with trustee buy-in increase the chances of achieving comprehensive settlements with prps that address both remediation and restoration.

Because remediation constitutes primary restoration, there is a natural tendency for trustees to exert pressure on EPA to maximize remediation, perhaps without concern for EPA's need to address the NCP's balancing and modifying criteria. The parties need to recognize this tension as normal and accept that there will be sites or situations where remediation decisions do not fully satisfy trustee restoration needs, which will then have to be addressed by other means.

EPA Region 1 has enjoyed a close working relationship with both NOAA and DOI/USF&WS for many years and has not had any major negative experiences with either trustee.

Q Isn't Congressional "interest" in site cleanups, to scrutinize and control cost, really investigation driven?

A Recent Congressional interest in large-scale dredging remedies is focused on ensuring that the short term risks and/or negative impacts of remedy implementation are adequately

assessed prior to remedy selection. This assessment has long been required by the NCP, but some in Congress apparently believe that EPA has downplayed these risks and impacts in its analyses.

Q Isn't cost-benefit analysis a code word for cost cutting for PRPs re NRD?

A The Superfund statute does not require cost-benefit analyses, but it does require EPA to select cost-effective remedies. Thus, the effectiveness of various alternatives and varying levels of remediation in achieving cleanup objectives must be evaluated relative to the costs of those alternatives. Higher cost remedies should be proportionally more effective than lower cost remedies if they are to be considered cost-effective.

To Chuck Nace:

Q EPA Region 2 has a ROD-focused broadcast e-mail. Why not have this broadcast at the RI/FS (Remedial Investigation/Feasibility Study), allowing time to incorporate restoration with remediation? Why not extend the broadcast e-mail approach with DOI to other Federal as well as state trustees?

A DOI asked for this initially. The broadcast is working well. Expanding the broadcast to other trustees would be good idea. EPA does notify trustees when sites are listed, but we could work better and will likely talk about it. Good idea.

Q Has the rate of listing new NPL (National Priority List) site changed, fewer now than in the past?

A New sites are proposed for the NPL as they are discovered and evaluated. A comparison of past and present numbers is not a reliable measure of the Superfund program as there are many factors that can affect the number, such as the number of sites discovered, the ability of states to address the sites, etc. A better measure of environmental cleanup would be to determine the number of contaminated sites that are in existence and see how many of them are being addressed through local, state, federal, or private actions. I am not aware of any group that is tallying this information.

To All EPA:

Q What is your wish list in the NRD process based on Sharon Brook's presentation)?

A (Rich Cavagnero) EPA's wish is that Federal and State trustees identify their sites/areas of interest early on and articulate concerns before remedy selection.

A (Chuck Nace) I would echo Rich's comment. Early involvement is the key to ensuring that data that can be collected to assist in NRD claims. I spoke to several people at the meeting that indicated that trustees, in general, do not want to "show their hand" too early in the process, which leaves EPA wondering if an NRD claim will be made and what the trustees really need for individual sites. It would be nice to see the trustees submit a preliminary natural resource survey (PNRS), which according to the NCP §300.615(c)(1) and EPA Eco Update Volume 1, Number 3 may be requested and paid for by USEPA, that contains a conclusive statement whether or not the site is a trustee concern from a NRDA perspective and also to identify specific items that are needed during the pre-listing stage in the Superfund process. This would aid EPA in determining exactly what the trustees need, why they need it, and allow data needs to be incorporated into the RI/FS investigation if permitted under CERCLA.

To All Panelists:

Q Are "restoration" projects for NRD possible/better approaches to environmental improvement than sediment "remediation" at multi-source sites in urban areas?

- A (Tom Brosnan) We traditionally view a good remediation as necessary to achieve or approach primary restoration.
- A (Rich Cavagnero) I don't think restoration projects can substitute for public health or ecological risk reduction necessary to achieve minimally protective levels. Once those levels are achieved, however, the incremental risk reduction achieved by higher levels of remediation might be evaluated against the benefits of restoration projects.
- A (Bill Hyatt) This is a very interesting question. My suspicion is that sediment remediation (ie, dredging), especially on a large scale is going to be fraught with problems (e.g., re-suspension, release of stable contamination that is not exposed to the ecology or human activity, treatment and disposal logistics). I think that the first step in an urban river restoration should be to develop a vision of what is reasonably possible (like EPA taking an early, preliminary look at alternatives). The vision should include restoration projects that will improve the condition of the urban river and increase its use by humans living in the area. If removing contaminated sediments, on balance, causes more harm than good, then I think restoration projects should be preferred.
- Q Why have any NRD "settlement" be translated to money? Money is a human invention having no relation to the environment – instead why not have actual restoration, with recovery of "interim damage being in terms of land transfers and active overstocking unaffected areas and monitoring to ensure successful recovery?
- A (Tom Brosnan) While there's a preference for crafting settlements in terms of projects that satisfy the liability, sometimes monetization is required. For example, when the responsible party just wants to cash out.
- A (Rich Cavagnero) Simple put, the money can buy restoration later after remediation is complete and the public can weigh in on what they consider to provide the most benefit.
- A (Bill Hyatt) I am afraid cost cannot be avoided, because there has to be some metric by which parties measure their exposure and the value of their settlement. But see above regarding how different parties value things differently. Cost can be an opportunity if it is used imaginatively.
- Q Given the theme of "remediation and restoration" and the bullet on the introduction slide – "The preferred calculation of damages is the cost of implementing this restoration" – Is the concept of settlement via deed trades and acreage calculations consistent with this theme? What is the future of these settlement mechanisms?
- A (Tom Brosnan)
- Q Please share your perspective on the differences that one encounters pursuing a cooperative NRD in "CERCLA" versus "OPA".
- A (Tom Brosnan) Cooperative assessments under OPA have lent themselves more readily because of the immediacy of spills, more acute nature, and the fact that there are fewer responsible parties to engage. In contrast, CERCLA incidents are more challenging in that there is usually a greater and varied history respecting contamination, the type of contamination is more persistent, and there are typically more potentially responsible parties. However, we have experienced quite a bit of success for CERCLA sites despite these greater challenges and fully expect cooperation is possible if the parties involved are motivated to resolve liability and achieve restoration.
- A (Bill Hyatt) I am afraid I have no relevant experience.
- Q To what extent can/should restoration projects for NRD promote local economic redevelopment? Is the latter a relevant consideration?
- A (Tom Brosnan) While the goal of NRD restoration projects is not to spur economic development, clearly such projects can and have had side benefits to the local economy – especially when addressing recreational or other human use activities.

- A (Bill Hyatt) I think the definitions of NRD require that economic considerations be taken into account. Isn't that what "lost use" really means?
- Q Should trustees and PRPs work together in managing public expectations to promote reasonable and prompt settlements?
- A (Tom Brosnan) Most definitely, both stakeholders need to ensure that their messages are consistent. However, care must be taken to ensure or thwart the perception that the stakeholders conspire to achieve public buy-in.
- A (Bill Hyatt) Definitely. See my comments about a vision above. I also think that managing expectations, a critical component of Superfund, is an excellent means of aligning the thinking of the parties themselves.
- Q Tom mentioned that the focus of NRDA should be on restoration, not process. Not everybody gets that. What can be done to move the process-intensive cooperative assessments to restoration-focused assessments?
- A (Tom Brosnan) In my slide on "Elements of a Cooperative Assessment," I list some of issues that should provide a greater focus on restoration results as opposed to process, namely focusing on restoration, integrating restoration with the response/remedy, defining and committing to shared objectives, using reasonable assumptions based on a sound framework for cooperative planning, building consensus, sharing relevant data, tailoring public participation, and providing funding to ensure trustee participation. Early agreements that heed these elements and provide a sound construct cannot avoid the process for process sake.
- A (Bill Hyatt) I think the trustees should figure out how they can get to the point of negotiating settlements as quickly as possible. HEA and the New Jersey formula are examples of how getting to "yes" quickly can be a huge benefit. Every dollar spent on process is a dollar that could be spent on restoration, and during the time when process occupies the attention and expense of the private parties.

Comments

- C1 There needs to be some discussion on PRP-Trustee settlements at relatively small CERCLA/RCRA/state waste sites where more study (i.e., NRDA) is cost and results prohibitive. Hence, a NRDA settlement based on existing remediation collected data.

Following the question and answer period, Tom asked the panelists to respond to "urban myths" about NRDA, i.e. statements that people frequently hear about NRD work that may or may not be true. Those statements and panelists' responses follow:

1. Using economic surveys to ask the public what loss they've suffered and what restoration they want is ridiculous!
 - o (Sharon Brooks) We can't always speak for public. But public has its place. Survey tools are well accepted, but this is a new arena in NRD.
 - o (Barbara Goldsmith) Where surveys have been used, they have been over the top regarding level of damages. These tools are very time-consuming. Use of surveys is a show stopper and antithesis of people getting and working together. If you can get to valuation other than use of controversial means like CV (Contingent Valuation) and conjoint analysis, that would be positive.
 - o (Rich Cavagnero) The public isn't monolithic. Finding out what various segments of the public value and why is important to making risk management decisions which often involve trade-offs among competing concerns and objectives.

2. The Trustees and EPA are never satisfied with the amount of data to be gathered! Data needs are unreasonable and unrealistic!
 - (Chuck Nace) CN – At the time, it may seem unreasonable, but EPA may not be aware of trustee needs. EPA regions would benefit from NRD 101 training as there is not a broad understanding of needs. Are RPMs (Regional Project Managers) coordinating because its required or needed? It's both.
 - (Rich Cavagnero) Project managers (RPMs/OSCs) and their managers are budget and time-constrained and generally want the least amount of data necessary to enable sound analysis and decision-making. EPA risk assessors, the various review boards, trustees, states, and citizens inevitably want more data to increase their comfort levels; they are not bound by the constraints in EPA's budget in their comments.
 - (Barbara Goldsmith) The challenge is to positively leverage data collection to get economies of scale. It would be useful in using such approaches as data quality objectives to better define data needs and quality.
 - (Tom Brosnan) Trustees can certainly be satisfied on the amount of data collected. But there needs to be some agreement between trustees and PRPs on data needs and how data are going to be used. If we agree to let the data tell the story, that works – w/out which it's difficult.
 - (Workshop Participant 1) The issue is that anyone might be asking for data, not just the trustees and EPA. This is not just a trustee/EPA problem.
 - (Bill Hyatt) The problem is conducting a scientific study in an enforcement context.
 - (Workshop Participant 2) Is there any experience with arbitrators or mediators to help?
 - (Bill Hyatt) Yes, but agencies can't be seen to be compromising remedy selection, a dynamic that makes remedy selection and I think restoration non-negotiable. EPA has an ADR (Alternative Dispute Resolution) office that can be very useful in coalescing private parties and in resolving other conflicts, but I have never seen it used to pick remedies or restoration.
 - (Workshop Participant 3) Mediation was used in the Housatonic River.

- 3 Trustees are unrealistic in considering baseline!
 - (Sherry Krest) Trustees can't get away with not addressing it. It is challenging, especially in urban areas. But it must be factored in.
 - (Tom Brosnan) It helps to parse baseline out by injury type (e.g., fish advisories or no, etc.); though some injuries categories like benthos can still be challenging.
 - (Workshop Participant 1) Is there any learning regarding baseline?
 - (Workshop Participant 2) Look at the NOAA JAT (Joint Assessment Team web site (<http://www.darrp.noaa.gov/partner/cap/relate.html>), where you can find some useful information.
 - (Workshop Participant 3) Baseline can get confused by the footprint of the release versus the extent of impact. These distinctions need to be made.
 - (Workshop Participant 4) The challenge for baseline is most acute in urbanized areas. It helps to ascertain what you know and what can you extrapolate based on information.

- 4 Some PRP consultants prolong the process, to their benefit!
 - (Bill Hyatt) PRPs know about these people and try to identify them and not use them. Spending money on unneeded process does not serve PRPs well. I would love to have the agency tell me if they think our consultant is becoming a problem. In fact, that has happened and I have fixed it.
 - (Tom Brosnan) In other cases where this has been apparent, the trustees have asked to deal directly with the principles.

- 5 Co-trusteeship is the bane of NRDA!
- (Bill Hyatt) In my mind, this is an aspect of the larger problem; that the trustees have to coalesce just as the PRPs do, a very difficult problem given the numbers of trustees (including states, tribes, etc) and agencies with different cultures.
 - (Tom Brosnan) Trustees need to try harder to come to the table and speak with one voice.
- 6 PRPs are only interested in minimizing costs!
- (Rich Cavagnero) This is generally true and EPA needs to justify remediation costs in terms of public health and ecological risk protection. The statute requires EPA to select cost-effective remedies.
 - (Bill Hyatt) Of course PRPs are interested in costs. The problem with this question is that it is the wrong question. The real question is what it means to minimize costs. In my view, as I said at the conference, is doing the job right the first time. That principle applies to studies and to work. Every time PRPs have to do something over, costs will not be minimized.
 - (Tom Brosnan) Being cost-effective should be everyone's goal and no one benefits from wasted funds. Cost-effectiveness can be improved by integrating remediation and restoration from the beginning, and include it in planning, data collection, and implementation.
- 7 Trustees are more interested in process than timely restoration!
- (Bill Hyatt) I think that to the extent this is true (and I obviously can't get into the heads of the trustees) it's because the challenge of working with so many stakeholders drives toward increased process. How else can decisions be made among agencies of coordinate authority but to force everyone to go through a process that forces decisions to be made?
 - (Tom Brosnan) Process can be reduced when there is greater comfort among the parties that there's a common vision and things are proceeding fairly. Process is increased when litigation is a concern.
- 8 EPA isn't interested in working with the trustees!
- (Rich Cavagnero) EPA is required to coordinate with trustees and, as mentioned earlier, has a self-interest in ensuring trustee concerns are addressed so that comprehensive PRP settlements can be achieved. This coordination must occur early on in the investigation process to avoid disputes at remedy selection time.
 - (Bill Hyatt) I suspect EPA sometimes sense the same frustrations with the trustees described above as the PRPs do, and the frustration tends to make their own job more difficult.
 - (Tom Brosnan) I think on the whole EPA is interested in working with the trustees, but there are likely some exceptions among individual project managers who might be concerned about delays. Trustees will improve coordination by speaking with one voice and being reasonable, flexible, and timely with their input and demonstrating that coordination will yield a better, more cost-effective outcome for all involved. PRPs should demand close EPA-trustee coordination to ensure this.
- 9 Everyone agrees that revamping the CERCLA NRD regulations will benefit PRPs, trustees, and the resources, but it'll never happen!
- (Bill Hyatt) I think a simplified set of regulations would be very helpful. I also think that the divisions within the trustee community will make it very difficult to promulgate a single set of regulations (especially with tribal and state involvement).
 - (Tom Brosnan) Revamping the CERCLA regulations will take political will and that will be enhanced by trustees and PRPs both asking for it to happen.
- 10 Trustees are more interested in getting their assessment costs covered than in restoration!

- (Bill Hyatt) I think that the first subject that comes up in any negotiations is the recovery of assessment costs, so that tends to be the early focus and may lead to that impression among PRPs.
- (Tom Brosnan) Trustees aren't more interested in assessment costs than restoration, but recovery of these costs is a legitimate part of a NRDA claim.

Regional Case Study Presentation: A Cooperative Assessment at a RCRA Facility – Stay Tuned!

This panel, a cooperative case study at a RCRA facility ([See *Regional Case Study Presentation*](#)), was moderated by Stephen Davis, Senior Scientist at ENTRIX. ([See *Steve's Biography*](#)) Steve also represented Todd Williams, Vice President and Technical Director at ENTRIX, who also participated in the settlement of this case. Steve underscored that cooperative settlements are possible, that there are urban myths (as exemplified above) that must be overcome, and that it takes some upfront work. Panel members included:

- Cynthia Jernigan, Hazardous Waste and Remediation Program Manager of the Environmental Programs at Kimberly-Clark ([See *Cindy Jernigan's Biography*](#)) – Cindy talked about the genesis of the site and its scope.
- John Williams, Vice President and Senior Consultant at Woodard & Curran ([See *John Williams' Biography*](#)) – John discussed the background of the site and its challenges.
- David Van Slyke, Esq., Chair of the Environmental Practice Group at Preti Flaherty Beliveau Pachios & Haley LLC ([See *Dave Van Slyke's Biography*](#)) – David addressed how NRD served as the framework for a settlement at a RCRA site, its milestones, and the mechanics of the settlement.
- Nan Cumming, Executive Director of Portland Trails ([See *Nan Cumming's Biography*](#)) – Nan informed those in attendance on how Portland Trails, a land trust, came to be involved at this site by providing restoration options (i.e., trails). She also touched on the pros and cons in working with an NGO (Non-Governmental Organization).
- Scott Whittier, Director of the Oil and Hazardous Waste Facilities Regulation Division with the Maine Department of Environmental Protection (DEP), stood in for Andrew C. Fisk, Director of the Bureau of Land and Water within the Maine DEP ([See *Scott Whittier's Biography*](#)) – Scott discussed the trustee role and challenges. Scott made the case for cooperative NRD as another but constructive tool; noting that if this case were constrained as an enforcement action, it is unlikely restoration would have ever taken place. Trustees in Maine are now working on a global MOA (Memorandum of Agreement), evaluating case-by-case settlements and looking for criteria at waste sites where NRD has a benefits.

Steve Davis closed the panel by summarizing lessons learned. He emphasized the NRD process a great tool and that cooperative assessments do work.

Questions and Answers

- Q What is the nexus between groundwater injuries and land acquisition and trails?
A (David Van Slyke) While the nexus is not direct, the focus was more on where groundwater discharges. Groundwater in this case was not a potable supply.
- Q What do you guess is the transaction cost for entire process?
A (Cindy Jernigan) The transaction costs were a lot higher (almost three-fold) than originally budgeted. This was primarily due to the fact that this was the first of this type of settlement to be made in the state. The total cost of the NRD settlement to Kimberly-Clark (transaction costs plus the actual funds paid for the property and improvements to the property) was equivalent

to the lowest cost, hot-spot remediation option, under the most favorable conditions. However, any other remediation option identified in the Focused Feasibility Study would have been substantially more expensive for K-C. Even though transaction efforts and costs were greater than expected, we were excited about the benefit to the community of the restoration and the fact that we could see that it was actually going to happen.

A (John Williams) We didn't want to be guinea pig, but saw that it would happen and recognize that the next time would be a smoother process. Before this site, the Maine DEP had not sorted their relationship for this type of site.

A (Scott Whittier) In Maine DEP, there is now a better understanding of common goals. Future NRDs will now involve a framework and more experienced folks; perhaps Maine DEPA will codify such a framework.

Q What was the cost for land acquisition and trails?

A (John Williams) \$100K for land acquisition and \$50k for other restoration-related work.

Q What services were lost via the HEA (Habitat Equivalency Analysis)?

A (David Van Slyke) The services lost were indeed non-potable groundwater that could serve other purposes (e.g., agriculture or other), and the value to potable drinking water as all groundwater in the State of Maine is considered to be of the highest value and of potable

Q What's the legacy value – back of envelope?

A (Steve Davis) Maine DEP looked at the New Jersey groundwater model, but it was clear this model could not apply to Maine; thus Maine used the HEA.

Small Group Session 1: Identifying NRDA Challenges and Finding Solutions - Creating a Site Work Plan

Using a hypothetical scenario ([See Handouts for scenario description and map](#)), small groups designed a preliminary work plan for to conduct a cooperative NRDA case, integrated with CERCLA RI/FS activities. Groups were asked to try to reach agreement on:

- Vision, framework, and/or conceptual model for the project
- Set of data needed to proceed, including studies
- Preliminary agreements
- Process and decision points for the work plan
- Potential obstacles and solutions

Groups were also invited to consider the following issues when developing their work plans:

- Contaminants of concern
- Pathways
- Potential resources (habitats affected)
- Eco-risk potential
- Type and scale of injury in relation to baseline
- Potential remedial and restoration opportunities
- Scaling opportunities to eco-risk and injury assessments
- Selecting remedial and restoration options that allow for public input
- Opportunities for win-win solutions that benefit all parties

Day 2 – June 1

Iris Ioffreda of Organizational Learning Associates opened the second day of the workshop by introducing the talk on Restoration Banking

Restoration Banking

Ron Gouguet, Senior Policy Analyst with the National Oceanic & Atmospheric Administration, and Ralph G. Stahl, Jr., Principal Consultant at the DuPont Corporate Remediation Group, co-hosted the discussion on restoration banking. (See [Restoration Banking Presentation](#) and [Ron's and Ralph's Biographies](#))

Ron opened the panel session by indicating that the term “Restoration Banking” may not be the most appropriate name for the concept being conveyed, offering the term “Restoration Up Front” as an interim descriptor and challenging participants to come up with a better term. Regardless, he noted that this concept is being applied in a number of situations – with pilots in TX, NJ, CA, and the Northwestern U.S. region. Ron defined the concept behind this topic, provided possible analogues, progress to date, various ways of approaching this concept, steps that need to be taken, the infrastructure that may be needed, and benefits and challenges. Ron underscored that good restoration projects make good settlements, and that the Restoration Up Front model is a useful opportunity to explore how to satisfy trustee as well as industry concerns in addressing collective liabilities.

Ralph indicated that there is real interest in further refining the “Restoration Up Front” concept by searching for additional pilots, refining the draft concept paper developed, and encouraging future dialogue on this concept. Ralph highlighted some of what he and others have heard to date on this concept; namely that there is a need to identify liability beforehand, there is a need to comply with NEPA so as to address options the public can weigh in; the challenge of how to apply excess credits if PRPs are not involved upfront; the need for this to be cooperative and the effect if it is not (“What if it does not work?”); and the lack of restoration projects or plans that are either already identified or may already have had public review or otherwise fleshed out in part, making “Restoration Up Front” likely to be a one-shot deal. Ralph highlighted potential next steps, including a future workshop on this topic.

Ralph and Ron wanted to take the opportunity to hear from others in the audience to gauge reactions and interest.

Questions and Answers

To Ron Gouguet:

Q Regarding enhancement versus restoration and other restoration options (conservation), will you weight each option differently?

A You need to look at the differential between the original condition and final outcome; that is, you need to quantify the ultimate value of the outcome regardless of the option. Regarding a cost/benefit ratio, do you shoot for one or better? We are not looking for the typical regulatory cost/benefit ratios, but informative ratios.

Q Is a company allowed to use land if it cannot be restored – 3 parts?

A We already are doing something like that regarding off-site restoration. I find it unacceptable where a company that ruined a piece of land then may approach a bank to buy its way out. We should probably not use land if it cannot be restored. Primarily, we are looking at industrial, not mining sites, and looking at interim lost use for company land. We are also looking at sites that

are under state cleanup actions. One possible improvement is to make the point clearly that point is the Restoration Up Front concept is being considered for interim lost use compensation not in lieu of primary restoration/clean-up.

- Q Some states have banking activities, e.g., ports, DOT, development. It is easier to justify wetlands taking if a bank exists. How do you protect NRDA banking if it is governed by states?
- A You write it into the charter for credits to be used only for NRD liability.

To Ralph Stahl:

- Q Can you cash credits across sites/borders? What of tax gains that companies get for implementing large restoration projects?
- A No, to the first part of the question. It is difficult to sell credits in one state for liability in another. Providing credits is likely to be constrained to the watershed. Perhaps there will be exceptions, for instance, for migratory waterfowl that are not limited to a geographical context, Regarding the second point, you cannot double dip (i.e., receive a tax gain) or so is the thought.
- Q With increased transparency for corporations, is there any satisfaction by offsetting corporation financial liabilities doing restoration projects?
- A I haven't done any projects to know. The Sarbanes-Oxley Act is a motivator. Do corporations have an incentive to smooth the financial sheet? There is always an incentive if you redress liability with current assets if there is no other alternative.
- Q Where multiple state involvement exists, there is a challenge of keeping restoration in the backyard. The incentive for companies regarding large land holdings doesn't convince me as we are looking for on-site restoration first as the highest priority. Isn't it better if corporations identify land parcels that trustees select and not just what corporations have?
- A If it's not a priority, would there be any sway regarding additional parcels – for interim loss or anything else? We are not so interested in the back 40. We need to better justify the need to use the existing land parcels.

To Both Panelists

- Q The greatest chance for success is to put this idea into a broader context. Have you engaged the White House regarding the Cooperative Conservation Initiative regarding applying this concept to a broader context?
- A We need to start in the NRDA context and go from there.
- A (Workshop Participant) There have been talks on applying experiences in the NRDA context and other venues in the framework of the Cooperative Conservation Initiative. The challenge in NRDA is developing a critical mass to make this concept work beyond the regional or watershed context. Virginia Tippie of Coastal America is a good point of contact in marrying analogues of this concept within the Cooperative Conservation framework.

Comments

- C1 There was concern that to the extent one identifies and quantifies value, you may increase the interest to fight over each DSAY; that this shift in DSAY may affects resource management priorities.
- C2 Some states have made headways in identifying and developing regional restoration projects and plans. Look to states, like Delaware, as potential resources.

- C3 Regarding the Hylebos effort, when NOAA came up with value at \$52k/DSAY, PRPs came out of the woodwork and so did developers. We saw that once an economic value is defined, it becomes the Wild West which may dampen acquisition interest for restoration purposes. It seems there is a need to carefully address land speculation as you assess injuries and value so as not to lose control of process.
- C4 One size solutions don't fit all. In urban areas, if creative thinking like this doesn't occur, restoration may not happen.

Small Group Session 2: Drawing Conclusions from the Scenario Exercise – What Did We Learn?

Small groups met a second time to debrief their work on the hypothetical scenario by considering what worked well and what factors made work on the scenario difficult or led to impasse. Groups were encouraged to consider:

- Factors that facilitated reaching agreement
- Issues on which you could not agree and factors that made agreement difficult.
- Lessons from the scenario exercise that might be useful in future cooperative NRDA work.

Each group prepared a report and then group members rotated to different tables to share their conclusions. (See [Scenario Reports](#))

Small Group Session 3: Enhancing Coordination in the Region

Small groups discussed ways in which coordination in the region could be improved, including how to expand the opportunities offered in this workshop, share information, and sponsor future meetings/opportunities for dialogue. Each group developed their best ideas – those with the greatest potential to expand on or continue the work accomplished at the workshop, and top ideas were submitted to the facilitators.

- Robin Burr mentioned that FACA minutes are available on the DOI web site at: <http://restoration.doi.gov/faca.html>
- Bill Hyatt emphasized the importance of this exercise because many workshops end and participants promptly forget what happened – there isn't follow-through. For example, everyone agrees that NRDA and RIFS should be done concurrently but no one has the means to make it happen. It is critical that we develop a better way to coordinate and make things happen, and he expressed his hope that these small groups might continue meeting in some fashion after the workshop.

The Small Group Planning Reports follow:

Group 1 – Ongoing NRDA Meetings

1. Region 1 JAT
2. Ad hoc NE NRD Committee – rotating annual meetings
3. Coordinate with Army Corps of Engineers/WRDA
4. Improve federal state coordination
5. Better integrate remediation and restoration
6. Regional restoration plans

7. Focus groups to review cases
8. Educational Workshops

Possible topics: Scientific issues (e.g., “baseline”)
 NRDA 101 for states (WRT: CERCLA/OPA)
 Cross-training (all involved/potentially involved in case)
 DQO process
 Cross-training on remediation/restoration

Group 2 – Developing Tools to Enhance NRDA

1. Guide for trustees (CERCLA)
2. Identify trustee contacts state by state (done by ASTWMO). Need to get on websites and add the state-specific program info contained at the back of the workshop materials.
 Responsibility: Since ASTWMO has no more funds, Federal trustees would need to coordinate
3. Develop generic agreements between states and feds (actually just post existing agreements as examples)
4. Protocol and document of processes/data needs
5. Threshold notification of all trustees at certain points in the process
6. Develop cost Dsay
7. Develop white papers on variety of topics (HEA, NRDA 101, SOL, baseline, etc.) Post on CAP, ASTWMO, DPI websites, etc.
 Responsibility: Jointly developed by industry and trustees

Group 3 – Developing Mechanisms to Engage Industry and Tribes

1. Get word out via business association, etc. (law firms) about meetings, cooperative assessment
2. Industry input into state legislation
3. Educate industry on benefits of cooperative assessments
4. Outreach to tribes (NRDA 101 at tribal conferences)
5. Transparency in approach, modeling efforts

Group 4 – Developing Communications Tool and Improving Information Sharing

1. Listserv
2. Blog
3. Website – augment CAP website with calendar, including meetings, training courses, etc.
 - Include MOU models (federal, state, interstate)
 - Include lessons learned
 - Case studies and success stories
 - State links
 - Settlement examples: cooperative assessments (RIFS/NRDA WPs); expedited restoration
4. Newsletter
5. Database of cooperative assessment cases
 - Transaction costs
 - HEA/valuation/scaling case studies
 - Society of Ecological Restoration info
6. Broadcast emails from EPA
7. Website
 - Find a host server for website
 - Find funding to build a website (these 2 may interact)

- Populate website with content from
 - States
 - Feds
 - Privates
 - Academics
 - Foreign
- Issue: Which agency gets credit for what?